

# EXHIBIT 1

A

MASTER AGREEMENT FOR PRODUCTS AND SERVICES  
BETWEEN DALLAS INDEPENDENT SCHOOL DISTRICT  
AND  
THE CONSORTIUM

This Master Agreement for Products and Services ("Agreement") is between The Consortium, a group of Companies set forth on Exhibit G ("Contractor" or "Consortium") and the Dallas Independent School District (hereinafter "DISD" or "District") and is dated for convenience, January 31, 2003. Micro System Enterprises, Inc. will be designated to execute this agreement or other related documents on behalf of The Consortium. This Agreement consists of the terms and conditions on pages 1 through 28 and such Customized Supplemental Agreements as may hereinafter be agreed between the parties. The parties agree that the terms and conditions of this Agreement shall govern any Customized Supplemental Agreements unless specifically modified as provided herein. The parties further agree that the District shall have no obligation to enter any Customized Supplemental Agreement nor to agree to any particular level of expenditure.

RECITALS

WHEREAS, The Contractor has experience and expertise in providing products and services in the areas of network cabling; network servers; email; network electronics and video teleconferencing; and.

WHEREAS, DISD and the Contractor in response to DISD RFPs RT2491-02; RT2492-02; RT2493-03; RT2494-03; desire to enter into an exclusive arrangement for implementation and management of the Erate Year 6 program; and

WHEREAS, Contractor represents itself able and, for consideration, willing to provide the services and products at the price and terms set forth in the Scope of Work and perform the services required by the DISD;

NOW, THEREFORE, for and in consideration of the promises hereinafter contained, the parties agree as follows:

1. RELATIONSHIP AND AUTHORITY.

a. Contractual Relationship. The Board of Trustees ("Board") as the governing body of DISD and Contractor hereby agree that the Board is charged under state law with the duty to provide adequate public schools and the authority to supervise all matters pertaining to the public schools, and that the Board will retain all such authority under this Agreement. The Board as the governing body of DISD and Contractor further agree that Contractor is accountable to and subject to the supervision of the Board and its designated administrative officers under this Agreement. In addition, the Board and Contractor agree that Contractor shall be subject to all policies, rules and regulations of the Board, the Texas Education Agency, and the Texas State Board of Education to the extent as applicable to Contractor's performance under this Agreement or to like contractors generally. Contractor also agrees that Contractor in the provision of goods or the administration of services pursuant to any grant or contract awarded to the DISD shall be considered a sub grantee or subcontractor of the DISD subject to the same conditions, assurances, and approvals as the DISD pursuant to the applicable grant or contract.

b. Authority. The laws of the State of Texas and any federal laws applicable to DISD govern this Agreement. Contractor specifically agrees to also be bound by these laws and any court orders imposed upon DISD in like manner as DISD insofar as those court orders apply to DISD students and services provided by Contractor pursuant to this Agreement. Contractor shall have the power and authority, consistent with the limitations herein, to take such actions as may be necessary or desirable to properly and efficiently provide the goods and services provided for herein.

c. Micro System Enterprises, Inc. represents and warrants that it has been duly authorized by each member of The Consortium to execute this agreement and other related documents on behalf of The Consortium. See Exhibit A attached hereto and fully incorporated into this agreement.

## 2. AVAILABILITY OF FUNDS AND BUDGET AND FISCAL PROVISION AND TERMINATION IN THE EVENT OF NON-APPROPRIATION.

a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the DISD. Any financial commitment on the part of DISD contained in this Agreement is subject to annual appropriation by the Board and the parties agree that DISD has no financial obligations under this Agreement other than for the current fiscal year at any point during the Term and that the DISD has not irrevocably pledged and held for payment sufficient cash reserves for funding Contractor or for providing the services described herein for the entire Term of this Agreement; provided however, that nothing in this section shall excuse DISD from payment for products shipped or services rendered prior to such termination for non-appropriation.

b. The amount of the DISD's obligation hereunder shall not at any time exceed the amount herein stated.

c. DISD has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.

d. This section controls against any and all other provisions of this Agreement.

## 3. TERM OF THE AGREEMENT

The Agreement is effective, January 31, 2003, and shall continue for the period of Erate Year 6; and, may be renewed at the option of the District for Erate Year 7 and Erate Year 8, provided that the District shall give written notice of its intention to renew not later than sixty (60) days prior to the end of the then current Erate year. For purposes of this agreement, the Erate Year is derived from the Schools and Libraries Division's issuance of funding for the Erate Program.

## 4. SCOPE OF SERVICES

The Contractor shall deliver services as described in Exhibit B – Scope of Services. The parties agree that a Customized Supplemental Agreement will be produced for each individual school or project which qualifies for Erate funding, for which Erate funding has been applied, or for which Erate funding is approved. A Customized Supplemental Agreement is attached hereto as Exhibit C. From time to time hereafter the District may agree to

additional products and services to be delivered by Contractor as may be reflected in one or more of any such Customized Supplemental Agreement as approved by the designated parties. The District will then issue a purchase order for each Customized Supplemental Agreement ("Purchase Order") Contractor specifically agrees that the opportunity to present such Customized Supplemental Agreements constitutes adequate consideration for this Agreement.

5. SOFTWARE LICENSES

Refer to Exhibit D.

6. COMPENSATION

The Contractor shall be paid in accordance with Exhibit E attached hereto. Requests for compensation shall be invoiced complete with a breakdown of charges and receipts as applicable. DISD shall make payments by check within 30 days of receipt of invoice. The total amount of money to be paid to the Contractor annually under this Agreement shall not exceed the total amount budgeted by DISD. Any goods delivered or work performed in excess of said amount shall not be compensated unless authorized by the General Superintendent of DISD in writing. Interest, if any, to be paid on past due sums shall be governed by and paid in accordance with the Texas Education Code. DISD's tax exemption certificate, attached as Exhibit F, shall apply to all orders placed by and for the DISD pursuant to this Agreement.

7. REPRESENTATIONS AND WARRANTIES

Contractor represents and covenants that it has the ability to perform the services required under this Agreement and that it will provide suitable and adequate resources to perform the work according to the description of the services set forth on the Statements of Work attached as Exhibits B-1 - B-5. Contractor represents and covenants that it shall furnish its professional skill and judgment with due care in accordance with the accepted standards of performance for those engaged in similar work in the State of Texas. The Contractor does not limit or exclude the implied warranty of merchantability.

8. TERMINATION

a. Either party may terminate this Agreement without cause at any time by giving thirty (30) days written notice of such termination. In such an instance, the Contractor shall be entitled to compensation for goods delivered or services performed up to the effective date of termination.

b. The District shall retain the continuing right to terminate this Agreement without penalty at the end of each fiscal year.

c. Upon receipt of written notice that this Agreement is terminated, the Contractor will submit an invoice to the DISD for an amount that represents the value of goods delivered and services actually performed up to the date of termination for which the Contractor has not previously been compensated as per paragraph 6 above. For goods or services for which the DISD agreed to pay on a payment schedule, invoices for payments due shall be submitted at

the agreed upon time. Upon approval and payment of this/these invoice(s) by DISD, DISD shall be under no further obligation to the Contractor, monetarily or oth

9. INDEPENDENT CONTRACTOR

The Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. The Contractor shall be liable for any act or acts of its own, or its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between the DISD and the Contractor or its agents and employees.

10. MODIFICATION OF AGREEMENT

The parties may amend this Agreement in writing by mutual consent. Changes, including any increase or decrease in the amount of the Contractor's compensation, shall only be effective upon the execution of a duly authorized written amendment to this Agreement.

11. ASSIGNMENT AND SUBCONTRACTING

The Contractor is prohibited from assigning this Agreement or any services provided pursuant to this Agreement to any party other than the members of the Consortium set forth on Exhibit G, unless such assignment is agreed to in writing by DISD, such agreement not to be unreasonably withheld, at the sole discretion of the District, and executed in the same manner as this Agreement. In the event Contractor elects to subcontract a portion of the services provided under this Agreement, Contractor shall request approval of the subcontractor from the District and the District shall approve or reject such request within thirty (30) days. If the District does not approve such request within thirty (30) days, Contractor's request to utilize the applicable subcontractor shall be denied. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this provision shall confer no rights on any party and shall be void.

12. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

In consideration of this Agreement, Contractor agrees that, prior to pursuing any other remedy, it will first obtain a determination by the General Superintendent of DISD as to the DISD'S understanding and intent of the Agreement. Such determination by the General Superintendent shall not be binding on Contractor.

13. BANKRUPTCY

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party,

this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

14. CONFLICT OF INTEREST AND COMMUNICATIONS

Contractor understands and certifies that it does not know of any facts relating to the award of this Agreement that would constitute a violation of Texas Local Government Code Section 171.004.

In accordance with Board Policy CHE (Local) and any successor policy, Contractor also hereby certifies to the best of its knowledge and belief that no current Board member or employee of DISD, and no one who has been a Board member within the last five (5) years or an employee of the DISD within the last two (2) years, has participated in bidding, selling or promoting this Agreement. Furthermore, Contractor certifies to the best of its knowledge and belief that no such current or former Board member or employee will derive any pecuniary interest, compensation or services, directly or indirectly, from this Agreement. Contractor understands that notwithstanding any provision of law to the contrary any violation of this provision of the Agreement shall make the Agreement voidable by the DISD.

During the term of this Agreement Contractor shall not communicate with individual members of District's Board of Trustees with regard to this Agreement. Should Contractor deem it necessary to communicate with the Board with regard to this Agreement, such communication shall be in writing to all members of the Board, with a contemporaneous copy to the General Superintendent.

15. INDEMNIFICATION

CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE DISD AND ITS TRUSTEES, MEMBERS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF THE DISD, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON DISD DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONTRACTOR AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT. THIS OBLIGATION SHALL NOT APPLY IN THOSE INSTANCES WHERE SUCH CLAIMS, COSTS, DAMAGES OR LOSSES ARE CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE DISD OR ITS EMPLOYEES. SUCH INDEMNITY IS LIMITED BY THE TERMS OF PARAGRAPH 21 BELOW. CONTRACTOR SHALL PROMPTLY ADVISE THE DISD IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE DISD OR CONTRACTOR KNOWN TO CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION OF AND DEFENSE OF SUCH CLAIM OR DEMAND AT

CONTRACTOR'S COST. THE DISD SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

#### 16. INSURANCE

Contractor will not be issued a Purchase Order and / or this Agreement shall not be in effect until evidence of the required insurance is provided. All payments and certificates of insurance must be submitted with this Agreement.

##### Classes of Risk

Class D – High limits – large construction or service contracts above \$100,000

##### Agreement and insurance requirement:

Hold Harmless Agreement  
Contractual Coverage  
Products and Completed Operations Coverage  
Waiver of Subrogation  
Owners and Contractors Protective Policy  
District named as additional insured on coverages, with the exception of the Professional Errors and Omissions policy.

Workers' Compensation    Statutory Limits  
Employer's Liability       \$500,000 per accident/\$500,000 per person

General Liability  
Bodily injury &               \$1,000,000 combined single limits/  
Property damage             \$2,000,000 aggregate

Automobile Liability  
Bodily injury &               \$250,000 per person/\$500,000 per accident  
Property damage             \$250,000

Professional Error & Omissions    \$1,000,000 per occurrence

Umbrella Policy                       \$2,000,000 per occurrence/\$2,000,000 aggregate

Payment Bond                        Equal to value of Agreement as required by statute

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specification, and shall be maintained in compliance with these general specifications throughout the duration of the Agreement, or longer, if so noted:

- ♦ Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A-.
- ♦ Liability policies shall be endorsed to provide the following:
  1. Except for the Professional Errors and Omission policy, name as additional insured the District, its Officials, Agents, and Employees.
  2. That such insurance is primary to any other insurance available to the additional insured.
  3. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage.



4. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and without lapse, for a period of three years beyond the Agreement expiration, to the extent that it is commercially and reasonably available, such that occurrences arising during the Agreement term which give rise to claims made after expiration of the Agreement shall be covered.

The District reserves the right to review the insurance requirements of this section during the effective period of the Agreement.

The District shall be entitled, upon request and without expense, to view copies of the policies and all endorsements thereto as they apply to the limits required by the District at Contractor's corporate offices, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies) subject to a reasonableness test and upon mutual agreement by Contractor. Upon such request by the District and Contractor's agreement, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

Contractor agrees that with respect to the above-required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.

- Except for the Professional Errors and Omission policy, name Dallas Independent School District and its officers, employees and elected representatives as additional insured (as the interests of each insured may appear), as to all applicable coverage;
- Provide for 30 days notice to the District for cancellation, non-renewal, or material change;
- Provide for an endorsement that the "other insurance" clause shall not apply to the Dallas Independent School District where the District is an additional insured shown on the policy;
- Provide for notice to the District at the address shown below by Certified Mail, Return Receipt Requested;
- Contractor agrees to waive subrogation against the District, its officers and employees for injuries, including death, property damage or any other loss to the extent same may be covered by the proceeds of insurance;
- Provide that all provisions of this Agreement concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

Contractor shall notify the District in the event of any change in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the District at the following address:

Dallas Independent School District  
Director of Risk Management  
3700 Ross Ave., Box 91  
Dallas, TX 75204

#### 17. LIABILITY POLICIES

The form of all insurance policies required by Section 16 shall be subject to the approval of the District's Risk Manager who shall complete Exhibit I. The Contractor shall notify the DISD in writing at least thirty (30) days

in advance of any cancellation, non-renewal or reduction of any of its insurance policies required under this Agreement.

18. NON-DISCRIMINATION

Contractor shall at all times provide the services hereunder in compliance with all laws with respect to discrimination. No person shall be subjected to discrimination on the grounds of race, color, religion, national origin, sex, sexual orientation, age, marital status and/or mental disability, physical handicap, matriculation or political affiliation. Contractor shall post notice of such non-discrimination in a conspicuous place.

19. PROPRIETARY INFORMATION OF DISD

The Contractor understands and agrees that, in its performance under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information that may be owned or controlled by the DISD and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to DISD, its employees or students. The Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor shall be held in confidence and used only in performance of the Agreement. The Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

20. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

DISD warrants that it will not present to Contractor orders which involve the reproduction of materials protected under copyright, patent and/or trademark law unless DISD owns such rights, is an authorized agent of the owner of such rights or has permission to reproduce the materials. In addition, DISD represents and warrants that it will not use the provision of services by Contractor to DISD to violate any law, infringe or violate any intellectual property rights or other rights of third parties including, without limitation, committing any fraud, violating any rights of publicity, rights of privacy, copyrights, trademarks, trade secrets and/or licenses, or patents. DISD grants Contractor permission allowing authorized representatives designated by DISD to reproduce DISD's copyright and trademark-protected materials without restriction for the term of this Agreement. Unless specified otherwise by DISD in writing, DISD designates all of its employees as DISD's authorized representatives for purposes of this provision.

21. LIMITATION OF LIABILITY

In no event will either party be liable to the other for lost profits, special, incidental, punitive, consequential or indirect damages (including lost profits) arising under this Agreement, whether based in contract, tort (including negligence), intentional conduct or otherwise, even if that party has been advised of the possibility of such damages. The aggregate amount of any liability of Contractor for any claim(s) arising from or relating to this Agreement will

not exceed, in any event, the amount paid to Contractor under this Agreement for the performance of services during the twelve (12) months immediately preceding the date on which the claim arose.

## 22. M/WBE PLAN

Contractor agrees to allocate work to subcontractors and vendors, which are historically underutilized businesses in accordance with the Minority and Women Owned Business Enterprise (M/WBE) forms and guidelines attached hereto as Exhibit G. No changes to the Plan may be made unless approved in writing by the District. Contractor, prior to the execution of this Agreement, shall report its M/WBE participation goal as a percent of the Contract Sum. During the performance of all Work under this Agreement, Contractor and its agents shall comply with all M/WBE policies of the District. The information shall be identified per firm, discipline and participation. While this Agreement is in effect and until the expiration of one year after final completion, the District may require information from the Contractor, and may conduct audits, to assure that the Plan is being, and was, followed. Contractor shall provide District with quarterly reporting of its M/WBE utilization.

Should Contractor propose the deletion of a M/WBE classified/certified contractor or vendor from its employ, the Contractor shall substitute a contractor or vendor of like classification/certification, and if Contractor is unable to substitute a contractor or vendor of like classification, Contractor shall provide District with documentation of its best efforts to acquire the services of a M/WBE replacement firm. Provided that Contractor complies with this section, such modification of a M/WBE vendor shall not require the District's prior written approval.

## 23. FELONY CONVICTION AND CRIMINAL BACKGROUND CHECK

Contractor must give advance notice to the District if an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The District may terminate this Agreement if the District determines that business entity failed to give notice as required by this paragraph or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly held corporation.

Contractor will obtain criminal history record information that relates to an employee, applicant for employment, or agent of the Contractor if the employee, applicant, or agent has or will have continuing duties related to the contracted services; and the duties are or will be performed on school property or at another location where students are regularly present. Contractor shall certify to the District before beginning work and at no less than an annual basis thereafter that criminal history record information has been obtained. Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District property or other location where students are regularly present. District shall be the final decider of what constitutes a "location where students are regularly present." Contractor's violation of this section shall constitute a material breach of the Agreement.

If Contractor is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence acceptable to the District with this Agreement showing compliance.

#### 24 ENTIRE AGREEMENT.

The following attached instruments are hereby made a part of this Agreement by this reference: 1.) RFP's RT2491-02; RT2492-02; RT2493-03; RT2494-03; and associated addendums 2.) The Consortium Response to the RFP's dated January 20, 2003. These instruments together with this Agreement contain the entire Agreement between the parties and no warranties, expressed or implied, representations, promises, or statements have been made by either party unless endorsed herein in writing. To the extent there is any conflict the following order of precedence shall govern: 1.) This Agreement, 2.) RFP's RT2491-02; RT2492-02; RT2493-03; RT2494-03; 3) Addendums, 4.) The Consortium Response to RFP's RT2491-02; RT2492-02; RT2493-03; RT2494-03; dated January 20, 2003, 4.) Provisions related to the DISD shall prevail over inconsistent general provisions, terms and conditions, and 5.) Exhibits A, B, C, D, E, F, G, H and I. No change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Agreement.

#### 25 NO WAIVER OF IMMUNITIES

Neither the execution of this Agreement by the District nor any other conduct of any representative of the District relating to the Agreement shall be considered a waiver of governmental immunities available to the District.

#### 26 CAPTIONS

The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

#### 27 GOVERNING LAW

This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

#### 28 WAIVERS

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

29 SEVERABILITY

In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

30 FAMILY CODE CHILD SUPPORT CERTIFICATION

By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."

31 SALES TAX CERTIFICATION

By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the Contractor certifies that the individual or business entity named in this bid or Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate."

32 USE OF DISTRICT'S MATERIALS

Contractor acknowledges and agrees that the District has an interest in maintaining and otherwise protecting the image and reputation of the DISD official logo or emblem and any other trademarks, copyrighted or otherwise protected materials of the District (hereinafter referred to as the "Owner's Protected Materials"), and that in order to accomplish this purpose, the District must in all cases assure itself that the Owner's Protected Materials are at all times used in a manner consistent with the DISD policies, administrative regulations, and this Agreement.

Contractor agrees that the District must, therefore, have the right to examine and to approve or disapprove in writing in advance of use; the contents, appearance and presentation of any and all advertising, promotional or other similar materials proposed by Contractor to be used in connection with any advertising or promotion utilizing Owner's Protected Materials.

Contractor therefore agrees that it;

- a. Will not produce, publish or in any manner use or distribute any such advertising, promotional or other materials prepared by or on behalf of the Contractor that have not been submitted to and approved in writing in advance by the District;
- b. Will submit to the District for its examination and approval or disapproval, in advance of use, samples of such materials together with the script, text, coloring, storyboards and a copy of any photograph proposed to be used.
- c. The District agrees that it will promptly examine and either approve or disapprove each submission and promptly notify Contractor of its approval or disapproval.



The District, on behalf of its minor schoolchildren, reserves the absolute right in its sole discretion to reject the content of any submission.

Contractor agrees that nothing contained in this Agreement shall give to the Contractor any right, title or interest in the Owner's Protected Materials and that the Owner's Protected Materials are, and are to be, the sole property of the District and that any and all use by the Contractor of the Owner's Protected Materials, and the goodwill arising there from, shall inure to the benefit of the District.

### 33 AUDIT AND INSPECTION OF RECORDS

Records of Contractor's costs, reimbursable expenses pertaining to the work pursuant to the Agreement and payments shall be available to District or its authorized representative during business hours and shall be retained for three years after final Payment or termination of the Agreement, unless District otherwise instructs the Contractor in writing.

At any time during the term of this Agreement and for a period of four (4) years thereafter the District or a duly authorized audit representative of the District, or the State of Texas, at its expense and at reasonable times, reserves the right to audit the Contractor's records and books relevant to all products and services provided under this Agreement. In the event such an audit by the District reveals any errors/overpayments by the District, the Contractor shall refund the District the full amount of such overpayments within thirty (30) days of such audit findings, or the District, at its option, reserves the right to deduct such amounts owing the District from any payments due the Contractor.

To the extent applicable to this procurement, in accordance with applicable Public Law, the Contractor agrees to allow, during and for a period of not less than four (4) years after the Agreement term, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or vendors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, other governmental investigative agency, or their duly authorized representative(s), legally authorized to investigate alleged fraud, overcharge, or other diversion of funds from a public school district receiving Federal and State public funds.

### 34 DISPUTE RESOLUTION

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Dallas, Texas. Venue for any litigation involving rights or arising under this Agreement shall be Dallas County, Texas.

### 35 NOTICES TO THE PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

TO DISD:

Dallas Independent School District  
Jack Hill  
3700 Ross Avenue, Box 447  
Dallas, TX 75204

TO THE CONTRACTOR:

The Consortium  
Frankie Wong  
10430 Shady Trail, Suite 105  
Dallas, Texas 75220

IN WITNESS WHEREOF the parties hereto have executed this Agreement the year and date first above written.

For  
DALLAS INDEPENDENT SCHOOL DISTRICT

For  
THE CONSORTIUM

By:  
Hollis Brashear  
(PRINT NAME OF DISTRICT REPRESENTATIVE)

By:  
Frankie Wong  
(PRINT NAME OF PERSON SIGNING FOR CONTRACTOR)

Signature and Date:  
Hollis Brashear 12/18/03  
(DISTRICT REPRESENTATIVE SIGNATURE)

Signature and Date:  
Frankie Wong  
(CONTRACTOR REPRESENTATIVE SIGNATURE)

Title:  
Board President

Title: 1  
President, MSE, Designated Member of the Consortium

Board Secretary:  
[Signature]  
Attest:  
(BOARD SECRETARY SIGNATURE AND DATE)

By:  
Ron Price  
(PRINT NAME OF BOARD SECRETARY)

APPROVED AS TO FORM:

By:  
L. M. Sny 12/18/03  
(SIGNATURE OF SCHOOL ATTORNEY AND DATE)



**EXHIBIT A**

**Letter Agreement between Consortium members  
and Micro System Enterprises, Inc.**

## LETTER AGREEMENT

This is a Letter Agreement between TECHNOLOGY CABLING SOLUTIONS, INC. (TCS) and MICRO SYSTEM ENTERPRISES, INC. (may hereinafter be collectively referred to as MSE);

WHEREAS, MSE will from time to time purchase goods and/or services from TCS for the Dallas Independent School District (DISD)-Technology Project (may be referred to as "the Project"); and

WHEREAS, TCS may from time to time sell to MSE certain goods and/or provide certain consulting services for the benefit of MSE and others, including DISD as MSE may direct; and

WHEREAS, TCS, subject to the terms herein and/or any other agreement between TCS and MSE, will endeavor to deliver and/or provide said goods and/or services as described in the purchase order to the DISD schools and/or DISD facilities designated on the purchase orders.

NOW, THEREFORE IN CONSIDERATION of the mutual covenants and promises and other valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

### L

#### COVENANTS, PROMISES AND/OR

#### REPRESENTATIONS OF MSE

1. With respect to the Project, MSE agrees that it will order goods and the services related thereto and that it will deliver purchase

orders on a periodic basis to TCS during the terms of this agreement.

2. Within five (5) days of receipt of funds by MSE from Schools and Libraries Division, Universal Service Administration Company and/or DISD or any other source for invoices delivered by TCS to MSE for goods and/or services provided to MSE and/or any other persons or party designated by MSE in conjunction with the Project referenced above, MSE will pay TCS for said invoices. All past due invoices will bear interest at the rate of 12% per year. A Past due invoice is defined as an invoice not paid within 30 days after MSE receives funds from Schools and Libraries Division, Universal Service Administration Company and/or DISD. In conjunction with any unpaid invoices from TCS to MSE, MSE shall use best efforts to collect funds from Schools and Libraries Division, Universal Service Administration Company and/or DISD which may be owing to MSE so that MSE may remit to TCS their share of the funds due hereunder.

- 2a. Contemporaneous with the execution of the instant Letter Agreement, MSE and/or any other persons or entities designated by TCS will execute the Purchase Money Security Agreement which is attached hereto as Exhibit \_\_\_\_.

3. It is contemplated and acknowledged by the parties that significant funds will be received by MSE for his work efforts in connection

with the Project and that he shall receive significant payments from DISD and/or SLD for his benefit and/or for the work and/or benefit of various vendors/subcontractors providing goods and/or services on the Project including, but not limited to, TCS.

3a. MSE hereby agrees to take all steps necessary to establish a separate segregated checking account, distinct and apart from any operating or other account of MSE in which he has a legal or equitable interest or signatory authority and he further hereby agrees to deposit or cause to be deposited in such segregated separate account, all funds received by him from DISD, SLD or any other source representing a payment(s) for work performed or goods provided by any subcontractor on the Project including, but not limited to TCS. MSE agrees that TCS shall have a security interest in such separate segregated account and that the same shall be covered by the terms and conditions of the security interest described in paragraph 2a above to be executed by MSE.

4. Further, MSE agrees to cause all vendors providing goods and/or services to or for the benefit of MSE and/or on the Project including, but not limited to TCS, to be paid on a timely basis and further agrees that MSE, as a signatory on the separate segregated bank account, has a fiduciary duty to all of the vendors.

## II.

### COVENANTS, PROMISES

#### AND/OR REPRESENTATIONS OF TCS

1. TCS will use commercially reasonable best efforts to timely deliver the goods and/or services requested in any and all purchase orders submitted to it by MSE, subject to the terms and conditions of this Letter Agreement and/or any other agreement between the parties.
- 1a. TCS shall have no obligation to fulfill any purchase order in the event that MSE is in default of this Letter Agreement and/or any other agreement between the parties.

## III.

### MISCELLANEOUS

The terms and conditions stated herein supersede all prior Agreements between the parties regarding the subject matter of this Agreement. This Agreement can only be modified by written Agreement duly signed by persons authorized to sign Agreements on behalf of MSE and TCS.

This Agreement shall be binding upon TCS when accepted and signed and will be governed by the laws of the State of Texas.

Any dispute concerning this Agreement must be brought in a court of competent jurisdiction in Dallas, Dallas County, Texas, and the parties hereto consent to such jurisdiction and venue.

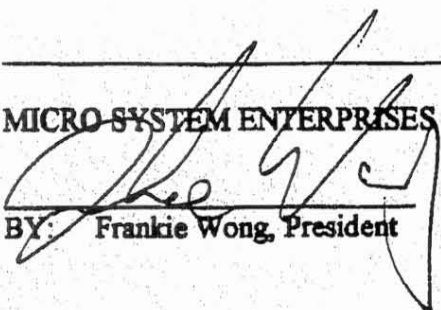
If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provision shall not in any way be impaired thereby.

All parties hereto have had the opportunity to consult with legal counsel of their own choosing prior to executing the instant agreement.

EXECUTED this the 23rd day of January, 2003..

TECHNOLOGY CABLING SOLUTIONS, INC.

  
BY: Bill Froechtenicht

  
MICRO-SYSTEM ENTERPRISES  
BY: Frankie Wong, President

**EXHIBIT B - 1**

**Consortium Statement of Work for Cabling  
90% Schools and 80% Schools**



# DALLAS INDEPENDENT SCHOOL DISTRICT

## Consortium Statement of Work for Cabling



### Consortium:

Analytical Computer Services  
Advanced Technological Solutions  
Communications Supply Corporation  
Hewlett Packard/Compaq

Hill Professional Services  
InterNetwork Experts  
Lazo Technologies  
Micro System Enterprises

Novell  
Technology Cabling Solutions  
AVIZION  
Woodlands Network Solutions

February 4, 2003



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## Consortium Description

The listed alliance of vendors, both minority and non-minority firms, is built on the premise that expertise exists within the Dallas\Fort Worth Metroplex to provide the solutions the Dallas Independent School District seeks. We believe our individual and collective expertise more than qualifies us to be selected as the DISD partner. As evidenced in the following and documented throughout this response, we believe we provide the best solution to meet DISD's needs.

Members of the consortium are:

Analytical Computer Services  
1901 Royal Lane, Suite 102  
Dallas, TX 75229  
972-247-4227  
Frank Trifilio, President/Owner

Advanced Technology Solutions  
1513 Corinth Street  
Dallas, TX 75215  
214-428-0222  
Ruben Ratcliff, Director

Avizion  
16300 Addison Road #250  
Addison, TX 75001  
972-267-7950  
Barbara A. Martin, President

Communications Supply  
Corporation  
14841 Trinity Boulevard  
Fort Worth, TX 771655  
817-318-8855  
Andy Dean, Director

Hewlett Packard/Compaq  
5310 Harvest Hill Road  
#200  
Dallas, TX 75230  
972-702-4143  
Garrett Goeters  
Hill Professional Services  
3612 Sail Maker Lane  
Plano, TX 75023  
972-672-8878  
Eddie Hill, Principal

InterNetwork Experts  
5960 Midway Road  
Addison, TX 75001  
713-795-2911  
Mark Hiltz, President

Lazo Technologies  
611 W. Mockingbird LN.  
Dallas, TX 75247  
214-652-9898  
Al Vasquez, Vice President

Micro System Enterprises  
10430 Shady Trails #105  
Dallas, TX 75220  
972-239-2174  
Blair Thomas,  
Dir./Operations  
Novell  
6565 N. McArthur Blvd #500  
Irving, TX 75039  
972-501-6727  
Colby Ward, District Director

Technology Cabling  
Solutions  
4528 Crown Ridge  
Plano, TX 75024  
281-983-9955  
William Froechtenicht,  
President  
Woodlands Network  
Solutions  
1901 Royal Lane, Suite 102  
Dallas, TX 75229  
972-247-4227  
Frank Trifilio,  
President/Owner

The Consortium will use the following two suppliers for additional services:

Lakehills ISC  
10420 Jenny's Jump Drive  
Austin, TX 78733  
512-263-1825  
Kevin Killebrew, President

LBI Group Companies  
5613 Blue Bird Avenue  
Dallas, TX 75237  
214-467-9300  
A. Gus Warren, Owner